

IN RESPONSE, PLEASE
REFER TO: M000710A

July 11, 2000

MEMORANDUM FOR: William D. Travers
Executive Director for Operations

John F. Cordes, Acting Director
Office of Commission Appellate Adjudication

FROM: Annette L. Vietti-Cook, Secretary /RA/

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:25 P.M.,
MONDAY, JULY 10, 2000, COMMISSIONERS' CONFERENCE
ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND
(OPEN TO PUBLIC ATTENDANCE)

I. SECY-00-0093 - Rulemaking to Modify the Event Reporting Requirements for Power Reactors in 10 CFR 50.72 and 50.73 and for Independent Spent Fuel Storage Installations (ISFSI) in 10 CFR 72.216

The Commission¹ approved a final rule amending 10 CFR 50.72, 50.73, and 72.216 to:
1) better align the reporting requirements with the NRC's current reporting needs for information to carry out its safety mission, 2) reduce unnecessary reporting burden, 3) clarify the reporting requirements where needed, and 4) be consistent with NRC actions to improve integrated plant safety assessments. The Commission approved the publication and implementation of this final rule subject to the attached changes.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

8/11/00)

The staff should make the attached changes to the regulatory analysis.

¹ Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Dicus was not present when this item was affirmed. Accordingly the formal vote of the Commission was 4-0 in favor of the decision. Commissioner Dicus, however, had previously indicated that she would approve this paper and had she been present she would have affirmed her prior vote.

II. SECY-00-0106 - Final Rule: 10 CFR Parts 30, 31, and 32 - "Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material" and Related Change to the Enforcement Policy

The Commission² approved a final rule amending 10 CFR Parts 30, 31, and 32 to explicitly require general licensees who possess certain devices containing byproduct material to register their devices. The final rule also adds provisions to improve the accountability of generally licensed devices and changes the enforcement policy with respect to the loss, abandonment, or improper transfer or disposal of sources and devices. The Commission approved the publication and implementation of this final rule subject to the attached changes.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO) (SECY Suspense: 8/11/00)

The staff should initiate the first round of registration within 9 months of Commission approval of this final rule. If implementation needs to be delayed, the staff should notify the Commission of the reasons for the delay.

(EDO) (SECY Suspense: 4/11/01)

The staff should promptly develop and distribute the pamphlet, as discussed in the Federal Register notice, that will provide basic information for general licensees to further increase the likelihood of compliance with this rule.

The staff should keep the Commission informed of the status of this program including such milestones as when the registration process has been implemented, the staff's experience in establishing and using the national device database, the degree to which Agreement States are compatible with the rule, and progress in allowing for electronic transmittals of reporting information. Also, the Commission should be notified if, during development of the FY 2001 fee rule, the estimated fee changes dramatically (e.g., $\geq 25\%$).

(EDO) (SECY Suspense: 3/31/01)

The Commission approved the staff's proposed revision to the Enforcement Policy included as Attachment 3 to SECY-00-0106.

² Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Dicus was not present when this item was affirmed. Accordingly the formal vote of the Commission was 4-0 in favor of the decision. Commissioner Dicus, however, had previously indicated that she would approve this paper and had she been present she would have affirmed her prior vote.

III. SECY-00-0112 - Hydro Resources, Inc. Petition for Review of LBP-99-18, LBP-99-19, and LBP-99-30

The Commission³ approved a Memorandum and Order: 1) denying review of LBP-99-18, LBP-99-19, and the first half of LBP-99-30 (groundwater); 2) denying the intervenors' motion to reopen the record; and 3) posing questions to the parties regarding the practical import of a recent Tenth Circuit decision.

(Subsequently, on July 10, 2000, the Secretary signed the Memorandum and Order.)

Although the Commission declined to reopen the current adjudicatory record on HRI's Section 8 site, the Commission nonetheless finds that Dr. Fogarty has raised potentially significant generic health and safety concerns that might bear on other sites. Dr. Fogarty maintains, for example, that the NRC's 0.44 mg/l standard is too lenient and that it may expose kidneys to excessive chemical toxicity. The staff should review Dr. Fogarty's submission and take appropriate action.

Attachment:
As stated

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
EDO
OGC
CIO
CFO
OCAA
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR - Advance

³ Section 201 of the Energy Reorganization Act, 42 U.S.C. Section 5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioner Dicus was not present when this item was affirmed. Accordingly the formal vote of the Commission was 4-0 in favor of the decision. Commissioner Dicus, however, had previously indicated that she would approve this order and had she been present she would have affirmed her prior vote.

Changes to Federal Register Notice in SECY-00-0093

1. Substitute the following two paragraphs for the third and fourth full paragraphs on page 57 of the *Federal Register* notice.

Spent fuel storage cask problems [former sections 50.72(b)(2)(vii) and 72.216(a)(1), (a)(2), and (b)]. The provisions of section 50.72(b)(2)(vii) are deleted because these reporting criteria are redundant to the reporting criteria contained in sections 72.216(a)(1) and (a)(2). Repetition of the same reporting criteria in different sections of the rules added unnecessary complexity and was inconsistent with the current practice in other areas, such as reporting of safeguards events as required by section 73.71.

Sections 72.216(a)(1) and (a)(2) place upon general licensees the same reporting criteria as are placed on specific licensees under sections 72.75(b)(2) and (b)(3). To avoid duplication in Part 72, sections 72.216(a)(1) and (a)(2) are deleted and section 72.216(c) is abridged to simply require that the general licensee shall make initial and written reports in accordance with sections 72.74 and 72.75. These changes eliminate a reference in section 72.216(a) to section 50.72(b)(2)(vii), now deleted, which had established the time limit for initial notification by general licensees. The same time limit is placed on general licensees by including them within the scope of section 72.75(b). Section 72.216(b) is also deleted because its requirements for a written report are encompassed by section 72.75(d)(2).

2. Page 40, line 16: change "1 hour after the release or notification" to "4 hours of the occurrence"
3. Page 59, line 9: delete "Appendix B, "
4. Page 59, line 17: delete "Appendix B, "
5. Page 59, footnote 3: revise as follows "The examples refer to those published in ~~the November 9, 1999 revision to NUREG-1600.~~ **NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions," dated May 1, 2000.**"
6. Page 63, line 5: change "790" to "700"
7. Page 63, line 10: change "200" to "132"

Changes to Regulatory Analysis in SECY-00-0093

1. Page 2, 'Proposed Action' section, line 3: change "21,000" to "20,800";
line 12: change "14,300" to "13,770" and change "140" to "132";
line 18: change "2 significant digits" to "the nearest 1000 hours or \$100,000";
line 20: change "2 significant digits" to "the nearest \$100,000"
2. Page 3, Table 1: change "150,000" to "148,000" and change "130,000" to
"127,000"
3. Page 3, Table 2: change "11" to "11.5" and change "9.8" to "9.9"
4. Delete footnote 4.

Changes to the final rule in SECY-00-0106

1. The compatibility category for Agreement States for 10 CFR §§ 31.5(c)(13) and 31.6 should be changed from Compatibility Category C to B.

Changes to the Federal Register Notice in SECY-00-0106

2. The staff should add a brief discussion to the *Background* section for the purposes of defining the term, “Agreement State” and identifying the Agreement States since this rule affects general licensees who historically may not have been aware of the distinction between NRC’s jurisdiction and that of the Agreement States and may work in both jurisdictions.
3. On page 73, paragraph 3 (Response), revise line 1 to read ‘ ... to purchase,” **is unnecessarily restrictive and** presents more’
4. On page 73, paragraph 3 (Response), in line 2, add a new sentence after the period which reads ‘**Therefore, the final rule requires that the required information regarding the device be provided to the purchaser “before the device may be transferred.”**’
5. On page 73, paragraph 3 (Response), revise lines 3 and 4 to read ‘ ... transfer may, in **a few** some cases, **not always** get it to the person actually using the device, **this will not always be the case.** ~~—~~ **the Commission believes that overall, upfront disclosure prior to transfer of the device is** ~~will be~~ preferable.’
6. On page 73, paragraph 3 (Response), in lines 7 through 9, delete the 5th sentence (Being knowledgeable about this ... regulatory requirements.)
7. On page 73, paragraph 3 (Response), revise line 10 to read ‘ ... allows ~~some~~ flexibility to the distributor to use another approach to disclose ~~ing~~ **the** information,’
8. On page 73, paragraph 3 (Response), revise line 11 to read ‘ ... by the Commission. **For example,** if the distributor believes’
9. On page 77, paragraph 2 (Response), add a new sentence to the end which reads ‘**The base civil penalties range from \$5,500 to \$45,000.**’